

PATENT**Application # 10/003,636****Attorney Docket # 2001-0163A (1014-150)****REMARKS**

The Examiner is respectfully thanked for the consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 11, 12, 14, 15, 27 and 28 has been amended for at least one reason unrelated to patentability, including at least one of: to correct an informality; to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 9, 11-20, and 25-31 are now pending in this application. Each of claims 9, 11-20, and 25-31 are in independent form.

I. The Antecedent Basis Rejections

Each of claims 11 and 12 was rejected under 35 U.S.C. 112, second paragraph, as lacking sufficient antecedent basis for the limitation "...placing the request, management, and voice Ugs..." . Each of claims 11 and 12 has been amended solely for either addressing an informality or correcting a typographical error, thus explicitly presenting one or more elements implicit in the claim as originally written when viewed in light of the specification, and therefore not changing the scope of the claim. Thus, reconsideration and withdrawal of these rejections is respectfully requested.

II. The Indefiniteness Rejections

Each of claims 17 and 28 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. These rejections are respectfully traversed.

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Regarding indefiniteness rejections, the Federal Circuit has held that the law is clear that **if the claims, read in light of the specification, reasonably apprise those skilled in the art of the use and scope of the invention**, and if the language is as precise as the subject matter permits, the claims are definite under Section 112, second paragraph. *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 624, 225 USPQ 634 (Fed. Cir. 1985), *cert. dismissed*, 474 U.S. 976 (1985).

Applicants respectfully submit that no evidence has been presented that either of claims 17 or 28, when “read in light of the specification,” do not “reasonably apprise those skilled in the art of the use and scope of the invention.” Instead, the present Office Action, at Page 2, merely recites:

[r]egarding claim 17, it is unclear to the examiner what is intended by the limitation “... further including maximizing contiguousness of the data+signaling interval.

[r]egarding claim 28, it is unclear to the examiner what is intended by the limitation “... further including minimizing fragmentation of the data+signaling interval.

These statements fail to provide any evidence that “the claims, read in light of the specification”, such as the first full paragraph of page 8, do not “reasonably apprise those skilled in the art of the use and scope of the invention”. Thus, no *prima facie* case has been made that claims 1-20 are indefinite. Accordingly Applicants respectfully request reconsideration and withdrawal of the rejections of claims 17 and 28.

III. The Obviousness Rejections

Each of claims 9, 13-16, 18-20, 25-27, and 29-31 was rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of Hebsgaard (U.S. Publication No. 2004/0218589), Beser (U.S. Patent No. 6,807,193), Giacomelli (U.S. Publication No. 2002/010826), Moore (U.S. Patent No. 6,807,195) Lee (U.S. Patent No. 6,529,520) and/or Rabenko (U.S. Patent No. 6,763,032). These rejections are respectfully traversed.

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Most inventions arise from a combination of old elements and each element may often be found in the prior art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). However, mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole. *Id.* at 1355, 1357. Instead, “[t]o reject claims in an application under section 103, an examiner must show an un rebutted *prima facie* case of obviousness.” *Id.* at 1355.

“To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.” *See* MPEP 2143.

Moreover, the “Patent Office has the initial duty of supplying the factual basis for its rejection.” *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057, *reh’g denied*, 390 U.S. 1000 (1968). “It may not... resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis”. *Id.*

“Once the examiner... carries the burden of making out a *prima facie* case of unpatentability, ‘the burden of coming forward with evidence or argument shifts to the applicant.’” *In re Alton*, 76 F.3d 1168, 37 USPQ2d 1578 (Fed. Cir. 1996) (*quoting In re Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444).

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establish a *prima facie* case of obviousness.

B. Missing Claim Limitations

Each of independent claims 9, 11-20, 25, and 26 recites, *inter alia*, “partitioning the map interval into” “a request interval, a management interval, a data+signaling interval, and a voice

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Interval". As implied by the Office Action, the applied portions of the relied upon references simply do not teach or suggest, expressly or inherently, a "partitioning the map interval into" "a request interval, a management interval, a data+signaling interval, and a **voice interval**".

Each of independent claims 27 recites, *inter alia*, a "flexibly partitioning the map intervals into a plurality of sub intervals based upon bandwidth requirements of the sub intervals, the sub intervals comprising at least a **voice interval**". As implied by the Office Action, the applied portions of the relied upon references simply do not teach or suggest, expressly or inherently, a "flexibly partitioning the map intervals into a plurality of sub intervals based upon bandwidth requirements of the sub intervals, the sub intervals comprising at least a **voice interval**".

Thus, even if there were motivation or suggestion to modify or combine the applied portions of the references relied upon in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, as **attempted to be modified and/or combined**, still do not expressly or inherently teach or suggest every limitation of at least independent claims 9, 11-20, and 25-27, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

C. No Motivation or Suggestion to Modify the Applied Reference

"The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP 2142. The requirements for meeting this burden are clear.

To establish a *prima facie* case of obviousness, an explanation must be provided stating why proposed modifications would have been obvious to one of ordinary skill in the art at the time the invention was made. *See*, MPEP § 706.02(j). In other words, "there must be some suggestion..., either in the reference[]... or in the knowledge generally available to one of ordinary skill in the art, to modify the reference". *See* MPEP 2143.

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According to the Federal Circuit the “mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” *In re Fritch*, 972 F.2d 1260, 23 USPQ 2d 1780, 1783-784 (Fed. Cir. 1992) (quoting *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988)). In that same case, the Federal Circuit further held that it “is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that ‘[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.’” *Id.*, 23 USPQ 2d at 1784.

The present Office Action recites conclusory statements that:

1. “[r]egarding claim 9” “it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data”. *See* Page 3.
2. “[r]egarding claim 19” “it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data”. *See* Page 4.
3. “[r]egarding claim 30” “it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data”. *See* Page 6.
4. “[r]egarding claim 13” “it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data”. *See* Page 7.
5. “[r]egarding claim 14” “it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data”. *See* Page 8.
6. “[r]egarding claim 15” “it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data”. *See* Page 9.
7. “[r]egarding claim 29” “it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data”. *See* Pages 10-11.
8. “[r]egarding claim 16” “it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data”. *See* Page 12.
9. “[r]egarding claim 18” “it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data”. *See* Page 13.

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10. "[r]egarding claim 20" "it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data". See Page 14.
11. "[r]egarding claim 25" "it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data". See Pages 14-15.
12. "[r]egarding claim 26" "it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data". See Page 16.
13. "[r]egarding claim 31" "it is obvious that the data region could transmit any type of media, e.g. audio, video, and/or data". See Page 20.

Yet, the present Office Action fails to establish a *prima facie* case of obviousness regarding at least claims 9, 13-16, 18, 19, 20, 25, 26, 29, 30, and 31, since the Office Action presents no explanation regarding why the proffered modifications would have been obvious to one of ordinary skill in the art at the time the invention was made.

D. No Motivation or Suggestion to Combine the Applied References

"The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP 2142. The requirements for fulfilling this burden are explicit and straightforward.

"[T]he examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." (emphasis added). *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998). To show these reasons, "[p]articular findings must be made". *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). Such factual findings must be supported by "concrete evidence in the record". *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

Moreover, a showing of combinability must be "clear and particular". *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 161 (Fed. Cir. 1999). That strong showing is needed because, "obviousness requires proof 'that the skilled artisan . . . would select the elements from the cited prior art references for combination in the manner claimed'". *In re Scott E.*

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Johnston, No. 05-1321, Fed. Cir.; 30 January 2006; 2006 US App. LEXIS 2282 (quotation omitted) (emphasis added).

Consequently, an Office Action must clearly and objectively prove that each applied reference is "within the field of the inventor's endeavor", and if not, "is reasonably pertinent to the **particular problem** with which the inventor was involved". See *In re Dillon*, 919 F.2d 688, 694 (Fed. Cir. 1990) (*en banc*) (emphasis added). Again, such factual findings must be supported by "concrete evidence in the record". *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

In addition, "[t]he patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness." *In re Sang-Su Lee*, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Thus, the Office Action must clearly and objectively prove some "suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to":

"select the references";

"select the teachings of [the] separate references"; and

"combine [those teachings] in the way that would produce the claimed invention".

In re Scott E. Johnston, No. 05-1321, Fed. Cir.; 30 January 2006; 2006 US App. LEXIS 2282 (internal citations omitted). See also *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998) (discussing the "the test of whether it would have been obvious to select **specific** teachings and combine them as did the applicant") (emphasis added); and *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985) ("When prior art references require selective combination... to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself."). As always, such factual findings must be supported by "concrete evidence in the record". *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

Further, this obviousness standard applies regardless of whether the Office Action relies upon modifying or combining purported teachings.

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Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious modification of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the **desirability** of the modification.... It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fritch, 972 F.2d 1260, 23 USPQ 2d 1780, 1783-1784 (Fed. Cir. 1992) (citing *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991); *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985); and *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) (internal quotations omitted) (emphasis added)).

Therefore, the Office Action also must clearly and objectively prove that the “prior art suggested the **desirability**” of that modification or combination. *See also Akamai Techs. v. Cable & Wireless Internet Servs.*, 344 F.3d 1186, 68 USPQ 2d 1186 (Fed. Cir. 2003) (“[w]hen determining the patentability of a claimed invention which combines two known elements, the question is whether there is something in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the combination.”) (emphasis added). Once again, such factual findings must be supported by “concrete evidence in the record”. *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

Yet the present Office Action presents **no proof**, no concrete evidence, and notably **no evidence** whatsoever, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

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The present Office Action presents **no proof**, no concrete evidence, **and indeed no evidence, of anything** “in the prior art as a whole to suggest the **desirability**, and thus the obviousness, of making the **combination**.”

In the claim rejections of each of the following examples, the present Office Action presents **no proof**, no concrete evidence, **and notably no evidence whatsoever**, of any “suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to”:

1. “select the references”;
2. “select the teachings of [the] separate references”; or
3. “combine [those teachings] in the way that would produce the claimed invention”.

Instead, regarding the proffered combinations, the present Office Action merely, inadequately, and thus improperly recites:

1. At Pages 3-4, “[r]egarding claim 9” and a proffered combination of Hebsgaard, Beser, and Giacomelli:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of allocating bandwidth taught by Beser into the Hebsgaard's map. **The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system ... [i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Hebsgaard and Beser by incorporating the method of bandwidth sharing taught by Giacomelli. The motivation for creating such a modification being, to increase the efficiency of network traffic control though the use of bandwidth management techniques.**
2. At Pages 4-5, “[r]egarding claim 19” and a proffered combination of Hebsgaard, Giacomelli, and Beser:

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[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hebsgaard by incorporating the method of bandwidth sharing taught by Giacopelli. **The motivation for creating such a modification being, to increase the efficiency of network traffic control though the use of bandwidth management techniques ...** [i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Hebsgaard and Giacopelli by incorporating the method of allocating bandwidth taught by Beser. **The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system.**

3. At Pages 5-7, "[r]egarding claim 30" and a proffered combination of Hebsgaard, Beser, and Giacopelli:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of allocating bandwidth taught by Beser into the Hebsgaard's map. **The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system ...** [i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Hebsgaard and Beser by incorporating the method of bandwidth sharing taught by Giacopelli. **The motivation for creating such a modification being, to increase the efficiency of network traffic control though the use of bandwidth management techniques.**

4. At Pages 7-8, "[r]egarding claim 13" and a proffered combination of Hebsgaard and Beser:

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[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of allocating bandwidth taught by Beser into the Hebsgaard's map.

The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system.

5. At Pages 8-9, "[r]egarding claim 14" and a proffered combination of Hebsgaard and Beser:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of allocating bandwidth taught by Beser into the Hebsgaard's map.

The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system.

6. At Pages 9-10, "[r]egarding claim 15" and a proffered combination of Hebsgaard, and Beser:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of allocating bandwidth taught by Beser into the Hebsgaard's map.

The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system.

7. At Pages 10-11, "[r]egarding claim 29" and a proffered combination of Hebsgaard, and Beser:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of allocating bandwidth taught by Beser into the Hebsgaard's map.

The motivation for creating such a modification being, to

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**provide an efficient method of transmitting data traffic
between a modem and termination system.**

8. At Pages 11-12, "[r]egarding claim 16" and a proffered combination of Hebsgaard, and Moore:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination ob [sic] Hebsgaard and Beser by incorporating the current DOCSIS standard taught by Moore. **The motivation for such a modification being an improved system of transmitting packet voice traffic that minimizes latency and jitter.**

9. At Pages 12-13, "[r]egarding claim 18" and a proffered combination of Hebsgaard, and Giacomelli:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hebsgaard by incorporating the method of bandwidth sharing taught by Giacomelli. **The motivation for creating such a modification being, to increase the efficiency of network traffic control though the use of bandwidth management techniques.**

10. At Pages 13-14, "[r]egarding claim 20" and a proffered combination of Hebsgaard, and Lee:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hebsgaard by incorporating the method taught by Lee. **The motivation for such a modification being a simple method for allocating bandwidth dynamically to adapt to the changing number of requests.**

11. At Pages 14-16, "[r]egarding claim 25" and a proffered combination of Hebsgaard, Beser, and Rabenko:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of

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allocating bandwidth taught by Beser into the Hebsgaard's map. **The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system ... [i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Hebsgaard and Beser by incorporating the MAP design of Rabenko. The motivation for such a modification being to synchronize voice packet sampling with cable modem system grant processing when transmitting packet based voice using cable modems.**

12. At Pages 16-18, "[r]egarding claim 26" and a proffered combination of Hebsgaard, Beser, and Rabenko:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of allocating bandwidth taught by Beser into the Hebsgaard's map. **The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system ... [i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Hebsgaard and Beser by incorporating the MAP design of Rabenko. The motivation for such a modification being to synchronize voice packet sampling with cable modem system grant processing when transmitting packet based voice using cable modems.**

13. At Pages 18-19, "[r]egarding claim 27" and a proffered combination of Hebsgaard, Beser, and Moore:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of allocating bandwidth taught by Beser into the Hebsgaard's map.

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The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system ... [i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of [sic] Hebsgaard and Beser by incorporating the current DOCSIS standard taught by Moore. The motivation for such a modification being an improved system of transmitting packet voice traffic that minimizes latency and jitter.

14. At Pages 19-21, "[r]egarding claim 31" and a proffered combination of Hebsgaard, Beser, Giacomelli, and Lee:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the method of allocating bandwidth taught by Beser into the Hebsgaard's map. **The motivation for creating such a modification being, to provide an efficient method of transmitting data traffic between a modem and termination system ... [i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Hebsgaard and Beser by incorporating the method of bandwidth sharing taught by Giacomelli. The motivation for creating such a modification being, to increase the efficiency of network traffic control though the use of bandwidth management techniques ... [i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hebsgaard by incorporating the method taught by Lee. The motivation for such a modification being a simple method for allocating bandwidth dynamically to adapt to the changing number of requests.**

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Consequently, each of the above-cited rejections in the present Office Action fails to present the required **proof** of obviousness. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejections of claims 9, 13-16, 18-20, 25-27, and 29-31.

E. Finality

It is respectfully noted that because the Office Action fails to set forth sufficient facts to provide a *prima facie* basis for the rejections, any future rejection based on the applied reference will necessarily be factually based on an entirely different portion of that reference, and thus will be legally defined as a "new grounds of rejection." Consequently, any Office Action containing such rejection can not properly be made final. *See In re Wiechert*, 152 USPQ 247, 251-52 (CCPA 1967) (defining "new ground of rejection" and requiring that "when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference"), and *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967) (the USPTO "has the initial duty of supplying the factual basis for its rejection").

IV. Allowable Subject Matter

A potential statement of reasons for the indication of allowable subject matter is:

"none of the reference of record, alone or in combination, teach or suggest the combination of limitations found in the independent claims. Namely,

each of claims 9, 11-20, 25, and 26 is allowable because none of the references of record, alone or in combination, teach or suggest 'partitioning the map interval into' 'a request interval, a management interval, a data+signaling interval, and a voice interval';

claim 27 is allowable because none of the references of record, alone or in combination, teach or suggest 'flexibly partitioning the map intervals into a plurality of sub intervals based upon bandwidth requirements of the sub intervals, the sub intervals comprising at least a voice interval'; and

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claim 28 is allowable because none of the references of record, alone or in combination, teach or suggest 'flexibly partitioning the map intervals into a plurality of sub intervals based upon bandwidth requirements of the sub intervals, the sub intervals comprising at least a data+signaling interval; and further including minimizing fragmentation of the data+signaling interval';

each of claims 29-31 is allowable because none of the references of record, alone or in combination, teach or suggest 'flexibly partitioning the map intervals into a plurality of sub intervals based upon bandwidth requirements of the sub intervals'".

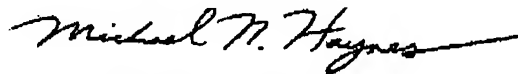
CONCLUSION

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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